IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10741 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JASHODABEN, WIDOW OF NATWARLALS. RASANIYA

Versus

STATE OF GUJARAT

Appearance:

MR MEHUL H RATHOD for the Petitioner.

Mr. L.B.Dabhi, ASSTT. GOVERNMENT PLEADER for Respondents No. 1-5

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/02/2002

ORAL JUDGEMENT

Rule. Heard the learned counsel for the parties. This is a petition for quashing and setting aside the order dated 31st July, 1997 passed by the respondent no. 2 and the order dated 19th September, 2000

passed by the respondent no. 1.

2. It is stated that the petitioner purchased the property of Mauje Khokhra Mahemdabad of city Taluka Ahmedabad, bearing city survey no. 588 (old city survey no.226) admeasuring 21-92-25 sq.mtrs. for a consideration of Rs. 10,000/- on 7.1.1991 from one Savitaben, widow of Manilal Parshottamdas Valand. The sale deed was registered on 10th March, 1992. The respondent no. 2 Chief Controlling Revenue Authority issued a show cause notice dated 1.2.1996 as to why the market value of the property should not be assessed at Rs.50,900/- and deficit stamp duty of Rs. 5090/- should not be recovered alongwith penalty of Rs.250/-. The authorities have presumed that the petitioner has purchased the land admeasuring 93-64-32 sq.mtrs.

3. The contention of the learned counsel for the petitioner is that the petitioner has purchased the area of only 21-92-25 sq.mtrs. and so she is not required to pay stamp fees as per the orders passed by the respondent authorities. Though it is mentioned in the order dated 19th September, 2000 that the petitioner has urged that she has purchased the property admeasuring 21-92-25 sq.mtrs. but that point has not been decided by the authorities. The learned Assistant Government Pleader states that it is true that the petitioner has purchased the property admeasuring 26-22 sq.mtrs. out of the property admeasuring 93-64-32 sq.mtrs. As this question has not been decided by the authorities concerned in this respect whether the petitioner has purchased the entire property admeasuring 93-64-32 sq.mtrs. or the petitioner has purchased only the land admeasuring 26-22 sq.mtrs. out of that entire land. If the petitioner has purchased part of the land of the entire plot, then the petitioner would not be liable to pay any additional stamp fees as sought for by the show cause notice. This fact has not been decided by the authorities concerned. As such, this Court cannot record a finding to the fact whether the petitioner has purchased the part admeasuring 26-22 sq.mtrs. or 21.95.25 sq.mtrs. or entire property i.e. 93.64.32 sq.mtrs. It can only be decided by the appropriate authority i.e. respondent no. 3. Therefore, the impugned orders passed by the respondent authorities are required tobe quashed and set aside and the matter is required to be remanded to the authorities for a fresh decision.

4. The petition is therefore, allowed. The impugned orders passed by the respondent nos. 2 and 3

are hereby quashed and set aside and the matter is remanded to the respondent no. 3 for a decision in accordance with law, after giving an opportunity of hearing to the parties. Until the decision by the respondent no. 3, no recovery will be made from the petitioner by the respondent authorities. In case, it is found by the respondent no. 3 that the petitioner has purchased the land less than 50 sq.mtrs., then under the Government Resolution dated 30th September, 1991, the petitioner would be entitled for the benefit under clause-7 of the aforesaid Resolution, the authority is required to consider while deciding the matter. Rule is made absolute accordingly with no order as to costs.

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